

815 CMR: COMPTROLLER'S DIVISION

815 CMR 2.00:GRANTS AND SUBSIDIES

This is an unofficial version of this regulation. The official version of this regulation on file with the Secretary of State Regulations Division will control in the event of any discrepancy with the information contained in this document.

Please contact the Regulations Division to obtain an official version of these regulations at:

Telephone: (617) 727-2831 **Fax:** (617) 742-4822

815 CMR 2.00: GRANTS AND SUBSIDIES

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2.01: Purpose, Application and Authority

(1) Purpose. 815 CMR 2.00 establishes rules and procedures to assist departments with the administration of Grants and Subsidies.

(2) Application. 815 CMR 2.00 applies to all state departments that administer Grants and Subsidies, including agencies, subdivisions, offices, boards, commissions or institutions of the Executive Department, including the Institutions of Higher Education, the Judicial and Legislative Branches and the Constitutional Offices. 815 CMR 6.00 governs Interdepartmental business between two or more state departments. 801 CMR 21.00 governs procurements and expenditures for commodities and services, including human and social services. The Office of the Comptroller will interpret 815 CMR 2.00 and take any actions necessary to carry out the purposes of 815 CMR 2.00, including issuing additional policies, procedures and forms for department use. Departments should verify the Legislative Authorization and account type of proposed funding, and the organizational structure of intended recipients, to determine if expenditures may be properly made as Grants or Subsidies under 815 CMR 2.00.

(3) Authority. 815 CMR 2.00 is issued pursuant to M.G.L. c. 7A, § 7, and St. 1986, c. 206, § 17.

2.02: Definitions

Grant - Discretionary and non-discretionary (designated) funds of financial assistance provided under contractual terms between a Grantor department and a Grantee to assist the Grantee in the achievement or continuation of a specified public purpose to benefit the general public or a segment of the general public consistent with the Grantor department's Legislative Authorization. Grants to non-Public Entities may be made from trust and federal funds but may not be made from

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appropriated state funds absent specific Legislative Authorization stating that Grants or financial assistance may be made from the appropriated state funds and that recipients may include non-Public Entities.

Grant Application - a document distributed by a department which is used to determine eligibility of a proposed recipient of a Grant of discretionary funds.

Grantee - A public or non-Public Entity selected as a recipient of Grant.

Incidental Grant - A one-time Grant with a total dollar value that does not exceed the amount established by the Office of the Comptroller.

MMARS - The State accounting system known as the Massachusetts Management Accounting and Reporting System.

Legislative Authorization - General and special laws including statutes and annual appropriation acts.

Public Entity - a unit of state or local government including a county, municipality, local public authority, school district, special district, district commission, regional government, any agency or instrumentality of government, and state authorities as defined in M.G.L. c. 29, § 1. The Office of the Comptroller identifies Public Entities in the MMARS vendor file (VEND) with a "G" in the organizational field.

State - The Commonwealth of Massachusetts.

Subsidy - Non-discretionary funds appropriated by the Legislature to be made either as a direct payment of a specified amount to a designated recipient entity, and are not specified as a "Grant", "contract" or "for a program", or are designated specifically as direct payments through "Subsidies" or a "Subsidy program".

Subsidy Agreement - A form issued or approved by the Office of the Comptroller that may be used by departments when making payments of Subsidies.

2.03: Subsidies

(1) In order pay a Subsidy, a department must have specific Legislative Authorization that either:

- (a) mandates a direct, non-discretionary "payment" of a specified amount to a designated recipient entity; or
- (b) directs payments to be made as "Subsidies" or as a "Subsidy program".

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(2) A Subsidy shall not include a Legislatively Authorized amount of funds to be expended for or on behalf of a specified entity that is designated to be made as a "Grant", "contract" or "for a program". Legislative Authorization that designates a specified amount of funds, or an amount "not to exceed" a specified amount, to be expended for or on behalf of designated entity, but does not clearly specify that the amount is to be made as a direct "payment" shall be interpreted to be either a "Grant" or a "contract" that has been exempted from competitive procurement requirements. These expenditures shall be made in accordance with relevant applicable general and special laws and regulations.

(3) Departments must execute a Subsidy Agreement with a Subsidy recipient and maintain a copy of the Legislative Authorization for the subsidy with the Subsidy Agreement for filing and recording keeping purposes.

2.04: Grants

Grants must comply with the following conditions:

(1) A department must have Legislative Authorization to award Grants or provide financial assistance.

(2) A department may not use a Grant to procure or expend funds for commodities or services, including human and social services, for or on behalf of the department.

(3) Grants to Public Entities may be made from all sources of funds.

(4) Unless otherwise provided by law, Grants to non-Public Entities are limited to trust and federal funds (MMARS account types 03 and 04).

(5) Grants may be made from appropriated state funds (maintenance funds, MMARS account type 01, or capital funds, MMARS account type 02) to non-Public Entities only if the department has specific Legislative Authorization stating that Grants or financial assistance may be made from the appropriated state funds and that recipients may include non-Public Entities. If the Legislative Authorization for a Grant or financial assistance is silent as to the type of eligible recipients, the presumption will be that the intended recipients will be Public Entities.

(6) Grants of non-discretionary funds (designated) shall be made to the recipients identified in the department's Legislative Authorization, trust language or a federal grant.

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(7) Grants of discretionary funds shall be disbursed through an open and public competitive process, as determined appropriate by the department, and in accordance with the department's Legislative Authorization, trust language or a federal grant. This process should include, but is not limited to the following:

- (a) a Grant Application, or other disbursement process, for each Grant or Grant program which complies with all relevant state or federal laws and regulations and federal grant requirements. Grantees receiving federal grant funds will be considered sub-recipients for federal grant purposes and will be required to comply with applicable federal requirements, including but not limited to sub-recipient audit requirements under OMB Circular A-133.
- (b) the Grant Application, or other disbursement process, should identify the purpose, scope, anticipated budget and duration of the Grant or Grant program, the evaluation criteria that will be used for Grantee selection and any information that a Grantee must provide to be considered eligible for a Grant;
- (c) some form of public notice or notification of the availability of a Grant or Grant Program;
- (d) notice to all entities responding to the Grant Application, or otherwise reviewed, of their selection or non selection for a Grant;
- (e) maintenance of a Grant file with complete records of a Grant or Grant Program including Grant Applications, or other disbursement documents, contractual documents and Grant reports.

(8) Incidental Grants, not to exceed an amount established by the Office of the Comptroller, may be awarded in writing, without the open and public competitive process outlined in 815 CMR 2.04(7) and the contractual requirements outlined in 815 CMR 2.05(1) through (4), provided that the Grants meet all other requirements of 815 CMR 2.00.

2.05: Contractual Requirements for Grants and Grant Payments

(1) The identification of a Grantee in a notice or a letter of a Grant award creates no contractual obligation for a department or the State. A Department can not issue Grant payments until the contractual documents outlined in 815 CMR 2.05 (2) or (3) are properly executed and filed in accordance with policies and procedures issued by the Office of the Comptroller.

(2) Commonwealth Terms and Conditions Contract and Standard Contract Form
An authorized signatory of a Grantee must execute a Commonwealth Terms and Conditions Contract and a Standard Contract Form issued by the Office of the Comptroller for Grants awarded under 815 CMR 2.00. The Commonwealth Terms

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and Conditions Contract will be incorporated by reference into any Standard Contract Form executed by the Grantee and any department. The Standard Contract Form and attachments must identify the amount, duration and scope of the Grant, and applicable fiscal or programmatic reporting requirements for documenting Grant expenditures or performance.

(3) Master Grant Agreement. The Master Grant Agreement for Local Governmental Entities and the Master Grant Agreement Authorization Form currently in place may continue to be used in lieu of the Commonwealth Terms and Conditions and Standard Contract Form until June 30, 1998 when the Master Grant Agreement and Authorization Form will expire and be replaced by the Commonwealth Terms and Conditions and Standard Contract Form.

(4) Grant Effective Start Date. Notwithstanding verbal representations by the parties, or an earlier start date stated in the Standard Contract Form, the effective start date of a Grant shall be the latest of the following dates:

- (a) the date the Standard Contract Form was executed by an authorized signatory of the Grantee;
- (b) the date the Standard Contract Form was executed by an authorized signatory of the department;
- (c) the date the Contract received Secretariat or other approvals required by law or regulation, if applicable; or
- (d) a later date specified in the Standard Contract Form.

(5) Grant Payments and Compensation. A Grantee shall be compensated in accordance with the specific terms and conditions of a Grant identified in the Standard Contract Form. Unless otherwise provided by law, all Grant payments are subject to appropriation pursuant to M.G.L. c. 29, § 26, or the availability of sufficient non-appropriated funds for the purposes of the Grant, and shall be subject to intercept pursuant to M.G.L. c. 7A, § 3 and 815 CMR 9.00. A department is under no legal obligation to compensate a Grantee, or to obtain additional funding, for any costs or other commitments which are outside of the scope of an executed Standard Contract Form.

2.06: Severability

If any provision of 815 CMR 2.00 is found to be illegal, unenforceable or void, then departments and Grantees shall be relieved of all obligations under that provision only, and all other provisions shall remain in full force and effect.

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REGULATORY AUTHORITY

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